IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.92 OF 2004

Haribhau Maruti Auti .. Petitioner.
Vs.
Pratap Eknath Auti & Ors. .. Respondents.

Mr.Vilas B.Tapkir for the petitioner.
Mr.P.J.Pawar for the respondent.

CORAM : D.B.BHOSALE, J.

DATED : 29TH AUGUST, 2006

P.C.:

. Heard learned counsel for the petitioner and the respondents.

2. This petition is directed against the order dated 29.10.1999 passed by the learned District Judge, Pune on the civil miscellaneous application No.925 of 1997. That application was filed by the petitioner seeking condonation of delay in filing the appeal against the judgment and decree dated 17.6.1996 passed in the suit filed by the respondents-plaintiffs for specific performance of agreement dated 2.11.1975. The suit was filed on 9.1.1986. It appears that during pendency of the suit, the advocate on record for the petitioner had withdrawn his appearance. According to the petitioner, withdrawal of appearance was without following due procedure and he was never

informed of the withdrawal of appearance. The suit was thereafter decreed exparte on 17.6.1996. It appears that the advocate was allowed to withdraw his appearance after due compliance of the procedure. In the execution proceedings, the notice was served on the petitioner on 16.7.1997 and at that stage, according to him, for the first time he came to know about the decree in the suit. Thereafter the petitioner seems to have filed application for condonation of delay on 30th August, 1997 and that application was rejected by the impugned order dated 29.10.1999. It is clear from the sequence of events mentioned above that after engaging the advocate on 9.1.1986 the petitioner did not contact his advocate at all for eleven years, till 16.7.1997 i.e. the date on which he received the notice in execution proceedings. The petitioner knew that the proceedings against him were pending before the Court and he cannot therefore, be in any manner lethargic, thinking that everything will be done by his advocate. It is his duty to contact his advocate every now and then to keep track of the case to find out developments in the matter. A person like the petitioner cannot pretend ignorance to state that he did not feel it necessary to contact his advocate for eleven years. The advocate for the petitioner seems to have taken discharge since he was not getting instructions. In my opinion, the discretion of the Court can be

available only in the favour of the litigant who has shown that the things were beyond his control. That is not the case in this case. The person waiting for the fruits of decree cannot be deprived of for years. It may be noticed that Mr.Tapkir, learned counsel for the petitioner fairly stated that there is absolutely nothing on record to show that for 11 years the petitioner ever contacted his advocate to enquire about progress of the suit. No indulgence could be shown to such litigant. The court below has rightly rejected the application for condonation of delay and the reasons stated in the impugned order, in my opinion, are just and proper. I see no reason to exercise writ jurisdiction under Article 227 of the Constitution of India. The writ petition is, accordingly, dismissed.

(D.B.Bhosale, J.)